

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAY 15 2009

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

IN RE: SEARCH OF THE RAYBURN
HOUSE OFFICE BUILDING, ROOM
NUMBER 2113, WASHINGTON, D.C. 20515

Case No. 06-0231-M-01

UNDER SEAL

UNSEAL

MEMORANDUM OPINION

On July 28, 2006, the United States Court of Appeals for the District of Columbia Circuit remanded this matter to this Court “for the limited purpose of making findings regarding which, if any, documents (physical or electronic) removed by [the government] from Congressman William J. Jefferson’s office pursuant to a search warrant executed on May 20, 2006, are records of legislative acts.” Order, *United States v. Rayburn House Office Bldg., Room 2113, Washington, D.C. 20515*, No. 06-3105 (D.C. Cir. July 28, 2006). Pursuant to the review process established in the D.C. Circuit’s order, this Court is to “review *in camera* any specific documents or records identified [by the Congressman] as legislative and make findings regarding whether the specific documents or records are legislative in nature.” *Id.* In its opinion issued later, the D.C. Circuit held that “the Congressman is entitled, as the district court may in the first instance determine pursuant to the Remand Order, to the return of all materials (including copies) that are privileged legislative materials under the Speech or Debate Clause.” *United States v. Rayburn House Office Bldg., Room 2113, Washington, D.C. 20515*, 497 F.3d 654, 665 (D.C. Cir. 2007).

In a series of twenty-nine *ex parte* submissions from August 2006 to February 2007, the Congressman reviewed the seized materials per the Remand Order and identified which documents he believes are legislative material privileged by the Speech or Debate Clause. In

total, the Congressman seeks protection for nearly 21,000 pages of material. He assures that he has refrained from invoking the privilege with respect to any document bearing upon the government's investigation. Having reviewed these claimed legislative materials *in camera* and considered case law on what constitutes legislative material under the Speech or Debate Clause, the Court makes its findings below.

While complying with the Remand Order, the Court emphasizes its discomfort with the review procedure established therein. This procedure is not a fair "balancing of the separation of powers underlying the Speech or Debate Clause and the Executive's Article II, Section 3 law enforcement interest in the seized materials." *Id.* at 655. By relying heavily on the good faith and diligence of the accused, the Remand Order presents the Congressman with a blatant conflict of interest. To wit, while some of the documents at issue are plainly legislative on their face, for a substantial portion of the documents the determination is not self-evident.¹ As to these ambiguous documents, the *ex parte* nature of the Court's review invites abuse by the Congressman.² In determining whether an ambiguous document genuinely relates to legislative matters, the Court is forced to rely wholly on what the Congressman says to put the document in context. This dependence reduces the Court's review to essentially a *pro forma* ratification of whatever the Congressman has declared off-limits.

¹ For example, the Congressman submits a large number of documents discussing news, policy issues, and meetings that he suggests were "gathered in connection with potential legislative initiatives." Nothing in these documents demonstrates whether the Congressman's asserted legislative purpose is genuine. Moreover, because the universe of "potential legislative initiatives" is infinite, this rationale can be deployed to shield anything.

² The Court emphasizes, however, that it has no particular reason to suspect that the Congressman has taken advantage of this opportunity for abuse. To the Court's knowledge, he has complied with the Remand Order in good faith. No impropriety should be imputed to him.

The Court unsuccessfully explored several ways to make its review more meaningful. This exploration included discussions with counsel aimed at developing a methodology for a more rigorous process. Unfortunately, these efforts failed because the parties could not reach agreement on any procedures that the Court suggested for a more substantive evaluation.

I. The Scope of Legislative Privilege under the Speech or Debate Clause

Article I, Section 6, Clause 1 of the Constitution provides that “for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other place.” Rooted in the separation of powers doctrine, the “central role” of the Speech or Debate privilege “is to prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.” *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 502 (1975) (internal quotation marks and citations omitted). Although the “heart of the Clause is speech or debate in either House,” *Gravel v. United States*, 408 U.S. 606, 625 (1972), the Clause provides broader protection, “confer[ring] on Members of Congress immunity for all actions ‘within the legislative sphere, even though their conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes.’ ” *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 415 (D.C. Cir. 1995) (“*B&W*”) (internal quotation marks omitted) (quoting *Doe v. McMillan*, 412 U.S. 306, 312-13 (1973)). The Clause protects those “congressional acts properly thought to fall within the legislative function — those ‘generally done in a session of the House by one of its Members in relation to the business before it.’ ” *B&W*, 62 F.3d at 415 (quoting *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881)). It also provides further protection by precluding “inquiry into the motivation for” acts “that occur in the regular course of the legislative process.” *United States v. Brewster*, 408 U.S. 501, 525 (1972).

The Clause's protection is "not all-encompassing," however. *Gravel*, 408 U.S. at 625. Rather than extending to "all conduct relating to the legislative process," *Brewster*, 408 U.S. at 515, the Clause only shields "matters that are part of, or integral to, the due functioning of the legislative process." *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1, 12 (D.C. Cir. 2006) (citing *Brewster*, 408 U.S. at 513-16). Consequently, the Clause "does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself," *Brewster*, 408 U.S. at 525. Thus, insofar as the Clause reaches matters beyond pure speech or debate, "they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." *Gravel*, 408 U.S. at 625. The line must be drawn between those activities that are "clearly part of the legislative process," *Brewster*, 408 U.S. at 516, and those that have only "some nexus" to the legislative process. *Id.* at 528.

II. The Congressman's Submissions

In his *ex parte* Memorandum Summarizing Congressman Jefferson's *Ex Parte* Submissions Concerning Privileged Documents ("Summ. Br."), the Congressman states that the documents for which he is claiming Speech or Debate privilege fall roughly into five broad categories:

- A. Records containing explicit references to specific legislative activities;
- B. Background information gathered by the Congressman or his legislative staffers pertaining to specific areas of legislative interest;

- C. Material gathered by the Congressman and his legislative staffers in connection with general legislative issues;
- D. Records of meetings, calendar entries, and telephone messages pertaining to legislative issues; and
- E. Records related to programs or conferences on legislative topics.

As the Court recounts below, the Congressman offers a legal argument as to why each of these categories falls within the sweep of the Speech or Debate Clause. He further assigns each document to one of these categories with a short description of what it is and how it fits.

A. Records containing explicit references to specific legislative activities

The Congressman explains that this category of documents contains “explicit references to specific acts of legislation, specific congressional hearings or investigations, or specific appropriations requests.” Summ. Br. at 5. He argues that “therefore, it is apparent from the face of the documents . . . that they fall squarely within the Speech or Debate privilege.” *Id.* These records, the Congressman asserts, comprise “an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation.” *Gravel*, 408 U.S. at 625.

B. Background information gathered by the Congressman or his legislative staffers pertaining to specific areas of legislative interest

The Congressman asserts that this category of documents represents material gathered by the Congressman and his staffers in connection with specific areas of legislative interest that particularly concern him insofar as they relate to his congressional district, committee assignments, and membership in various congressional caucuses. Summ. Br. at 13-14. He

claims that these documents are “privileged based upon representations made by the Congressman or his legislative aides that the particular records identified were gathered for the specific purpose of acquiring the necessary information or knowledge needed to legislate wisely or effectively in areas of particular interest” *Id.* at 14.

The Speech or Debate Clause protects research material procured with an eye toward areas of legislative interest, the Congressman argues, because such research is “an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation.” *Id.* at 625. As the Supreme Court has stated, a “legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which legislation is intended to affect or change.” *Eastland*, 421 U.S. at 504 (quoting *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927)). The Congressman contends that this background material must be protected from scrutiny because even where documents “do not detail specific congressional actions . . . indications as to what Congress is looking at provide clues as to what Congress is doing, or might be about to do” *B&W*, 62 F.3d at 420. The privilege protects such material whether gathered through formal or informal means. *See McSurely v. McLellan*, 553 F.2d 1277, 1287 (D.C. Cir. 1976) (“The acquisition of knowledge through informal sources is a necessary concomitant of legislative conduct and thus should be within the ambit of the privilege so that congressmen are able to discharge their constitutional duties properly.”).

C. Material gathered by the Congressman and his legislative staffers in connection with general legislative issues

As distinct from the materials in category B, this category of materials concerns a broad

swath of areas of legislative interest generally within the House's jurisdiction, as opposed to the more limited set of legislative topics in which the Congressman takes a special interest. The Congressman asserts that this "information gathered by [him] in connection with contemplated legislation or appropriations forms part of the motivation for his legislative activity, and the act of gathering such information is part of the regular course of his legislative duties." Summ. Br. at 22. For similar reasons stated with respect to the materials in category B, the Congressman argues that the Speech or Debate Clause protects all these documents as legislative in nature.

D. Records of meetings, calendar entries, and telephone messages pertaining to legislative issues

The Congressman asserts that, based on a review by himself and his legislative aides, this category of materials includes "only those calendar entries, telephone messages, and email messages that specifically refer to meetings or communication concerning legislation." *Id.* at 28. He contends that these materials are "an integral part of [his] 'deliberative and communicative processes,' and they may supply the motivation for his legislative decisions." *Id.*

In the Congressman's view, the Speech or Debate Clause protects not only the content of the conversations, but also the records reflecting that a contact was even made. The Congressman references the Third Circuit's decision in *In re Grand Jury Investigation*, 587 F.2d 589 (3d Cir. 1978) for instructive language on this point:

The records do, however, reflect the fact that on a given date at a given time a conversation of a specific duration took place between the Congressman's office and a person or office at an identifiable location. These very documents, at least as to some telephone calls, record the fact that a legislative act took place. . . . We cannot imagine why the toll record of such a call should not be protected

Id. at 597. Insofar as these records pertain to legislative issues, the Congressman argues, they are

privileged because, as part of the Congressman's information-gathering process, they "provide clues as to what Congress is doing or might be about to do." *B&W*, 62 F.3d at 420.

E. Records related to programs or conferences on legislative topics

The Congressman advises that "legislators and their aides often attend conferences related to matters that fall within their legislative purview to gather information, including written materials, that will inform their legislative efforts." Summ. Br. at 34. Clarifying that he has limited this category to records "pertaining to only the particular conferences related to the Congressman's legislative functions," the Congressman argues that this material is privileged because these conferences are one of "a number of formal and informal means" through which "Members of Congress and their legislative staffers accumulate knowledge." *Id.*

III. Findings as to the Congressman's Documents

The Court used the Congressman's five suggested categories merely as a framework to help structure its review of the myriad documents submitted. As formulated by him in the abstract, those categories have no established legal significance, nor should this opinion be read to impart any. The Court does not here rule as a matter of law on how the Speech or Debate Clause applies to the Congressman's five generally stated categories. Furthermore, because the categories themselves are of no legal import, the Court need not and does not rule on whether each document actually falls within the category into which the Congressman puts it. Simply stated, the Court limits its holding to the individual documents at issue and announces no new rules of law.

Having reviewed the Congressman's submissions in light of case law on the Speech or Debate Clause, the Court's findings are in near-complete accordance with the Congressman's

claims of privilege. The Court holds that the following documents (identified by Bates-stamp number) in their entirety are legislative material under the Speech or Debate Clause:

00015-00017, 00018-00063, 00069-00072, 00074-00077, 00081, 00105-00136, 00138-00144, 00149-00217, 00292-00307, 00308-00309, 00324-00495, 00501, 00503, 00963, 00968-00969, 01002-01003, 01021, 01034, 01869, 01875, 01881, 01917, 01919, 01951, 01966, 01980, 02158-02164, 02181-02194, 02200-02201, 02202-02238, 07415-07418, 07461, 07470, 07473-07474, 07482-07483, 07493, 07500-07502, 07533, 07564-07565,³ 07566-07567, 07600-07602, 7655, 07661-07662, 07690, 07707, 07711, 07741, 07742, 07790, 07791-07792, 07999-08039, 08201-08203, 08250-08255, 08263-08266, 08289-08351,⁴ 08352-08355, 08358-08364, 08365-08389, 08390-08415, 08417-08428, 08436-08449, 08638-08640, 08641-08678, 08899-08961, 08962-08973, 09345-09346, 09361-09382, 09383-09397, 09419-09429, 09430-09447, 09505-09526, 09560-09607, 09609-09647, 09650-09706, 09710-09740, 09742-09792, 09798-09842, 09845-09890, 09895-09935, 09939-09978, 09984-10017, 10022-10058, 10060-10087, 10092-10093, 10094-10119, 10121-10161, 10167-10171, 10172-10190, 10191-10249, 10252, 10256-10281, 10283-10304, 10305-10333, 10338-10371, 10384-10424, 10428-10451, 10454-10478, 10485-10531, 10536-10566, 10567-10663, 10778-10783, 10802-10857, 10860-10863, 10865-10894, 10896-10940, 10946-10976, 10978-11033, 11039-11070, 11073-11110, 11114-11157, 11162-11207, 11212-11217, 11218-11235, 11236-11256, 11259-11289, 11300-11323, 11324-11353,

³ The Congressman's lists this document as only page 07564, but the document he submits is in fact a two-page document.

⁴ In what the Court presumes is a typo, the Congressman lists the starting page of this document as 08269.

11387-11456, 11457-11458, 11459-11490, 11496-11551, 11557-11566, 11573-11659,
11737-11744, 11822, 12055-12056, 12068-12134, 12135-12176, 12431-12438, 12580-12666,
12782-12888, 12892-12941, 12945-13008, 13022-13073, 13074-13084, 13085-13134,
13139-13146, 13288-13314, 13315-13366, 13367-13398, 13399-13428, 13429-13482,
13483-13507, 13542-13564, 13565-13594, 13595-13629, 13630-13657, 13658-13685,
13686-13712, 13713-13735, 13736-13755, 13757-13773, 13774-13789, 13790-13812,
13814-13833, 13834-13860, 13882-13884, 13923-13949, 13951-13958, 13961-14001,
14002-14071, 14076-14128, 14131-14212, 14218-14265, 14270-14315, 14324-14362,
14364-14394, 14395-14494, 14495-14550, 14552-14613, 14614-14678, 14679-14749,
14750-14803, 14804-14870, 14871-14919, 14920-14981, 14982-15043, 15045-15116,
15123-15188, 15189-15263, 15264-15321, 15324-15333, 15334-15342, 15343-15381,
15386-15425, 15430-15489, 15495-15576, 15578-15640, 15648-15690, 15695-15772,
15773-15803, 15807-15851, 15855-15904, 15907-15969, 15970-16005, 16008-16057,
16058-16102, 16124-16126, 16201-16254, 16269-16321, 16323-16377, 16381-16384,
16385-16432, 16440-16483, 16485-16549, 16577-16581, 16582-16620, 16621-16625,
16626-16678, 16717-16768, 16769-16828, 16833-16860, 16868-16916, 16919-16966,
16969-17010, 17011-17053, 17054-17058, 17059-17125, 17126-17129, 17130-17166,
17167-17211, 17214-17283, 17284-17359, 17360-17361, 17377-17382, 17383-17389,
17390-17391, 17392-17449, 17452-17524, 17525-17574, 17575-17634, 17635-17707,
17711-17774, 17775-17838, 17840-17879, 17881-17926, 17929-17979, 17982-18041,
18049-18113, 18117-18170, 18174-18244, 18245-18315, 18319-18356, 18359-18389,
18395-18462, 18467-18521, 18535-18540, 18541-18547, 18630-18671, 18784-18789,

18955-18965, 19035-19106, 19107-19183, 19188-19251, 19264-19317, 19446-19448,
19584-19585, 19970-19984, 19985-20037, 20057-20058, 20162-20234, 20237-20242,
20247-20249, 20250-20252, 20253-20285, 20290-20358, 20359-20411, 20412-20433,
20441-20458, 20464-20466, 20467-20474, 20475-20505, 20557-20563, 20564-20635,
20750-20755, 20760-20832, 20833-20843, 20844-20898, 20899-20943, 20984-20985,
21368-21373, 21376-21382, 21384-21388, 21458-21465, 21466-21472, 21473-21477,
21502-21505, 21506-21552, 21555-21564, 21565-21572, 21573-21580, 21581-21585,
21586-21590, 21591-21644, 21645-21649, 21650-21654, 21655-21708, 21709-21712,
21713-21867, 21869-21872, 21895-21897, 21898-21900, 21931-21934, 21940-21945,
21946-21952, 21953-21966, 22046-22052, 22053-22059, 22060-22066, 22098-22145,
22150-22216, 22220-22226, 22227-22228, 22229-22236, 22237-22240, 22244-22251,
22252-22253, 22254-22274, 22275-22299, 22495-22499, 22640-22669, 22679-22687,
22774-22780, 22781-22786, 22787-22832, 22833-22894, 22895-22982, 22983-23018,
23019-23062, 23063-23088, 23089-23247, 23249-23285, 23286-23295, 23358-23389,
23390-23404, 23415, 23594-23599, 23635-23697, 23698-23712, 23713-23719, 24427-24445,
24448-24451, 24567-24763, 24764-24905, 24912, 24958-24961, 25006, 25026-25099,
25100-25171, 25172, 25174-25178, 25179-25229, 25231-25318, 25320-25357, 25358-25401,
25402-25454, 25455-25497, 25498-25535, 25536-25539, 25540-25564, 25602-25672,
25673-25728, 25784-25785, 25786-25787, 25837-25841, 25973-25983, 26007-26010,
26011-26014, 26016-26019, 26021-26024, 26111-26157, 26158-26162, 26189-26194,
26205-26207, 26232-26235, 26239-26244, 26309-26310, 26315-26387, 26390-26395,
26398-26403, 26408-26440, 26451-26453, 26454-26518, 26520-26572, 26573-26589,

26621-26628, 26629-26658, 26666-26668, 26669-26675, 26682-26753, 26862-26865,
26866-26871, 26872-26889, 26890-27056, 27096-27097, 27175, 27275, 27277, 27279-27310,
27311-27330, 27570-27575, 27576-27610, 27611-27673, 27701-27715, 27728-27746,
27749-27752, 27779-27782, 27928-27930, 27948-28001, 28002-28003, 28026-28112,
28827-28834, 28847-28849, 28971-28976, 28979-28985, 28987-29060, 29061-29068,
29069-29075, 29076-29155, 29158-29183, 29184-29311, 29312, 29313-29315, 29316-29475,
29498, 29499, 29500, 29501-29503, 29534-29537, 29543-29555, 29556-29562, 29564-29568,
29649-29669, 29971-29975, 30012-30026, 30167-30196, 30206-30214, 30440-30487,
30492-30509, 31002-31008, 31009-31014, 31015-31051, 31057-31123, 31127-31133,
31201-31210, 31213-31220, 31327-31330, 31643-31657, 32322-32327, 32363-32425,
32426-32440, 32461-32533, 32534-32566, 32755-32756, 32763-32768, 32771-32776,
32777-32780, 32860-32865, 32866-32912, 32913-32929, 32934-32941, 32942-32971,
32979-32981, 32982-32988, 32995-33066, 33172-33174, 33175-33180, 33181-33184,
33185-33368, 33409-33410, 34187-34190, 34201-34203, 34228-34231, 34305-34306,
34311-34383, 34394-34399, 34404-34436, 34516-34581, 34582-34585, 34660-34667,
34668-34697, 34705-34707, 34708-34712, 34713-34714, 34721-34753, 34754-34792,
34898-34900, 34901-34906, 34907-34910, 34911-34929, 34930-35094, 35098, 35135-35136,
35321-35326, 35362-35424, 35425-35439, 35516-35523, 35524-35582, 35583-35585,
35608-35610, 35877-35881, 35882-35885, 35939-35968, 35971-35980, 36038, 36086, 36088,
36089-36402, 36404-36432, 36433-36743, 36745-36767, 36871-36874, 36875-36877,
36891-37204, 37206-37228, 37376-37422, 37510-37513, 37515-37516, 37872-37886,
38023-38095, 38096-38128, 38221-38223, 38240-38243, 38317-38318, 38325-38330,

38333-38338, 38339-38340, 38422-38485, 38488-38491, 38541-38548, 38549-38578,
38586-38588, 38589-38593, 38594-38595, 38602-38673, 38741-38743, 38744-38749,
38750-38751, 38754-38765, 38768-38771, 38772-38826, 38827-38837, 38838-38903,
38904-38937, 38978-38979, 39175-39180, 39218, 39220-39282, 39283-39297, 39305-39307,
39308-39315, 39318-39338, 39339-39342, 39343-39363, 39366-39452, 39698-39727,
39737-39745, 39776-39818, 39819-40233, 40290-40296, 40297-40302, 40303-40339,
40340-40349, 40794-40799, 40810-40883, 40884-40910, 40911-40926, 40927-40990,
40991-40994, 40995-41156, 41177-41179, 41213-41216, 41222-41234, 41235-41248,
41328-41348, 41349-41379, 41380-41508, 41509-41510, 41511-41518, 41538-41544,
42247-42250, 42251-42254, 42255-42265, 42268-42271, 42344-42438, 42457-42520,
42633-42946, 42948-42970, 42985-42988, 43168-43173, 43232-43247, 43393-43396,
43686-43765, 43766-43773, 43774-43780, 43799-43862, 43863-43888, 43896-43902,
43920-43922, 43965-43977, 43978-43991, 44071-44091, 44123-44170, 44175-44329,
44331-44334, 44335-44408, 44409-44423, 44426-44435, 44436-44443, 44444-44451,
44452-44515, 44516-44557, 44561-44567, 44568-44591, 44723-44802, 44803-44817,
44836-44845, 44846-44899, 44901-44926, 44934-44940, 44958-44960, 44961-44963,
45003-45015, 45016-45029, 45109-45129, 45161-45208, 45213-45367, 45369-45372,
45373-45446, 45447-45454, 45455-45460, 45463-45488, 45489-45552, 45553-45594,
45598-45604, 45629-45650, 45714-45717, 45719-45720, 45750-45753, 45827-45830,
45837-45855, 45933-45936, 45937-46006, 46086-46089, 46142-46325, 46326, 46328,
46330-46456, 46613-46624, 46738-46846, 46848, 46910-46914, 46916-46999, and
47000-47004.

Further, the Court finds that portions of the following documents are legislative material under the Speech or Debate Clause:

00082-00100: This is the only document for which the Court does not fully agree with the Congressman's claim of privilege. The Congressman seeks protection for this entire document, arguing that it "relate[s] to or [was] gathered in connection with [REDACTED]"

[REDACTED] Summ. Br. at 23. The Court finds, however, that pages 00082, 00084, 00086-00087, and 00092 are not legislative material. These pages are clearly [REDACTED]

[REDACTED]. It is well-settled that attempts to influence the Executive are not legislative within the meaning of the Speech or Debate Clause. *See, e.g., Gravel*, 408 U.S. at 625 ("Members of Congress are constantly in touch with the Executive Branch of the Government and with administrative agencies — they may cajole, and exhort with respect to the administration of a federal statute — but such conduct, though generally done, is not protected legislative activity."). Accordingly, the Court finds that only pages 00083, 00085, 00088-00091, and 00093-00100 are protected as legislative material.

00636-00715, 00868-00937, 01143-01313, 01604-01678: The Congressman concedes that certain portions of these documents contain non-privileged information. The portions for which he claims the privilege are listed in a twelve-page chart attached to his summary brief. The Court accepts those claims of privilege. The Congressman represents that he has already provided the remaining non-privileged material to the government by transmitting copies of these

documents with only the privileged matter redacted. No further action should be necessary.

01502: The Congressman claims the privilege for only certain portions of this document.

Specifically, he cites as legislative [REDACTED]

[REDACTED]

[REDACTED]. The document

should be transmitted to the government with these privileged portions redacted.

01503: The Congressman claims the privilege for only certain portions of this document.

Specifically, he cites as legislative [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The document should be transmitted to the government with these privileged portions redacted.

01504: The Congressman claims the privilege for only certain portions of this document.

Specifically, he cites as legislative [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The document should be transmitted to the government with these privileged portions redacted.

01505: The Congressman claims the privilege for only certain portions of this document.

Specifically, he cites as legislative [REDACTED]

[REDACTED]

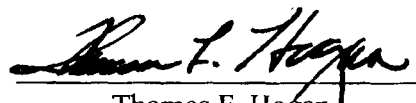
[REDACTED]
[REDACTED]
[REDACTED]. The document should be transmitted to the government with these privileged portions redacted.

01315-01394: The Congressman claims that this document is legislative except for an entry on page 01316 containing one of the names listed in the search warrant, Suleiman Yahyah. The Court agrees with the Congressman's claim of privilege. The document should be transmitted to the government entirely redacted but for the responsive entry on page 01316.

Finally, the Court notes that the Congressman has withdrawn his claims of Speech or Debate privilege over certain documents. Initially, the Congressman sought protection for 08107-08109, 08154-08156, 08450-08452, 08497-08499, 08544-08546, 08591-08594, 08111-08153, 08158-08200, 08454-08496, 08501-08543, 08548-08590, and 08595-08637. Later, the Congressman stated that these documents were "incorrectly identified as material covered under the Speech or Debate Clause" because they are "communications with the executive branch [that] should not have been designated as privileged." Summ. Br. at 5 n.1. The Congressman represented that he would turn over these documents to the government, so no further action should be necessary at this time.

An order accompanies this memorandum opinion.

May 14, 2009


Thomas F. Hogan
United States District Judge